

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT : Diana Oehms
SERIAL NO. : 10/595,924
FILED : May 19, 2006
FOR : Injected Molded Containers
ART UNIT : 3721
EXAMINER : Louis K. Huynh

MAIL STOP APPEAL BRIEF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

June 29, 2009

**APPELLANTS' BRIEF ON APPEAL PURSUANT TO
37 CFR § 41.37**

SIR:

This is an appeal from the final rejection of claims 3-24 of the present application.

(1) REAL PARTY IN INTEREST

The real party in interest is Reckitt Benckiser N.V. Limited by virtue of an assignment recorded in the United States Patent and Trademark Office on August 9, 2006, at Reel 018085, Frame 0560.

(2) RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

(3) STATUS OF CLAIMS

The application was originally filed with claims 1-24. A preliminary amendment dated May 19, 2006 amended claims 1, 3, 6-8, 10, 12-16 and 18. In response to a first Office Action, the applicants cancelled claims 1 and 2, and amended claims 3, 4, 6-9, 12, 16-18 and 24 in the response dated April 14, 2008, leaving claims 3-24 pending. In response to a Final Office Action, the applicants amended claims 16 and 18 in their response dated December 31, 2008, leaving claims 3-24 pending. Claims 3-24 now stand rejected.

(4) STATUS OF AMENDMENTS

In response to the Final Office Action dated January 22, 2009, the Appellants filed a Notice of Appeal. There are no unentered or pending amendments to the claims.

(5) SUMMARY OF THE CLAIMED SUBJECT MATTER

There are two independent claims pending, viz., claims 3 and 24. Claim 3 is directed to a process for the manufacture of a single or multicompartiment, rigid, water-soluble container, wherein the container comprises a detergent composition and is at least partially formed of injection molded water-soluble polymer. The process comprises the steps of forming the container, keeping the container under substantially anhydrous conditions, filling

the container with the detergent composition and sealing the container, wherein the container is allowed to come into contact with, or is brought into contact with a plasticizer after sealing. The foregoing subject matter of claim 3 is supported in the specification on page 5, lines 5-27. Claims 4-23 are dependent either directly or indirectly from claim 3.

Claim 24 is directed to a process for manufacturing a single or multi-compartment rigid, water-soluble container comprising a detergent composition, wherein the process comprises the following steps:

- (i) forming an array of containers in an injection moulding process;
- (ii) removing the array from the mould;
- (iii) placing the array in a storage area, substantially free of moisture;
- (iv) filling the array of containers with the detergent composition;
- (v) placing a closure on the array;
- (vi) sealing the containers; and
- (vii) separating the array into individual containers.

The foregoing subject matter of claim 24 is supported throughout the specification, and on page 35, line 17 to page 38, line 9.

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The sole ground of rejection to be reviewed on appeal is the rejection of claims 3-24 under 35 U.S.C. §102(b) as anticipated by WO 02/092454 (“WO ‘454”).

(7) ARGUMENT

I. THE REJECTION OF CLAIMS 3-24 UNDER 35 U.S.C. §102(b)

OVER WO 02/092454.

A. The claims are not anticipated by WO 02/092454 because the reference fails to teach each and every limitation of the present claims

The Appellants submit that present claims 3-24 are not anticipated by WO ‘454 because the reference fails to teach each and every limitation of the present claims. The presently claimed invention specifically requires that the containers be kept in a substantially anhydrous environment or conditions prior to filling with detergent composition. The container of each embodiment of the presently claimed invention is only exposed to moisture *after* the sealing step. In this regard, the Appellants respectfully direct the Honorable Board’s attention to page 6, line 31 to page 7, line 12 of the present specification, which states the following:

“The anhydrous retention conditions may be effected using common environmental control means. As an example, if the containers are to be stored before filling the storage conditions need to be controlled so that the humidity level is low. This can be achieved by the use of dehumidifiers controlling the atmosphere of the area where the conditions are stored. Alternatively, a number of containers may be stored in a sealed enclosure (such as a water-tight bag/box, e.g. a metal/plastic vessel) from which the bulk of the available moisture is withdrawn. The latter method is particularly suitable, where the containers need to be transported from the site of formation to the site of filling.” (page 6, line 31 to page 7, line 12).

From the above passage, the Appellants submit that the specification makes clear that the term “anhydrous conditions”, as meant to be interpreted in the present application, means an environment with virtually devoid of water. Indeed, the specification makes clear that external means of removing moisture from the surrounding atmosphere are required in order to achieve an acceptable anhydrous condition for performing the presently claimed process. Moreover, the Appellants submit that the term “anhydrous” is well known to those of

ordinary skill in the art to mean having substantially no water. Merriam-Webster Dictionary defines anhydrous as “free of water”. Therefore, it follows that “anhydrous conditions”, as used in the present claim, be interpreted to mean that the surrounding environment has substantially no water. This includes the surrounding atmosphere (i.e. air) where the containers are produced.

In the Final Office Action, the Examiner stated that term “anhydrous” was interpreted as keeping the container from being wetted with water. Therefore, because WO ‘454 does not specifically teach wetting the container with water, then WO ‘454 teaches each and every limitation of the presently claimed process. The applicants respectfully, but vigorously disagree with this interpretation.

The Examiner’s interpretation that “anhydrous conditions” means that the container is not wetted with water is simply without merit and unsupported by reason, and the Appellants submit that the Examiner is using the terms “anhydrous” and “dry” interchangeably, which is incorrect. Anhydrous has a technical meaning being simply keeping an item dry. The skilled artisan would understand that anhydrous conditions means that the surrounding environment is substantially free of water, as measured in humidity. The Appellants offer the following simple example demonstrating the difference between “anhydrous” and “dry”. An object placed into a room where the surrounding air has a humidity content of 30% will not be wetted with water in the environment under constant temperature above a dew point. The object in that environment can indeed be described as dry. However, a skilled artisan would never consider the conditions in the room with 30% humidity to be “anhydrous”. Accordingly, the Appellants submit that the Examiner has incorrectly interpreted the term “anhydrous conditions”.

There is absolutely nothing to suggest that the WO ‘454 teaches keeping the container in anhydrous conditions, as in the presently claimed invention. Although WO ‘454 does not teach wetting the container with water, this does not mean that the reference teaches keeping

the container in “anhydrous conditions”. The WO ‘454 reference does not teach any step of removing water content from the surrounding atmosphere, and therefore the understanding of the skilled artisan is that WO ‘454 does not teach keeping a water-soluble container under anhydrous conditions during the manufacturing process. Moreover, there is absolutely nothing in WO ‘454 that would suggest or even hint that anhydrous conditions are inherent in that process. Indeed, if the anhydrous condition were considered critical or even preferred in WO ‘454, then it would at least be mentioned; it is not.

Anticipation requires that a reference teach each and every element of a claimed invention. *Verdegaal Bros. v. Union Oil Co. of Cal.*, 814 F.2d 628, 2 USPQ2d 1051 (Fed. Cir. 1987). Because WO’454 does not teach keeping the container under substantially anhydrous condition or free of moisture, the Appellants submit that the reference does not anticipate the present claims. The Appellants respectfully request that the Honorable Board overturn the Examiner’s rejection.

(8) CONCLUSION

In view of the foregoing, Appellants respectfully request that the Honorable Board reverse the final rejection.

Respectfully submitted,

NORRIS MC LAUGHLIN & MARCUS, P.A.

By /Mark D. Marin/
Mark D. Marin,
Reg. No. 50,842
875 Third Avenue - 18TH Floor
New York, NY 10022
Phone: (212) 808-0700
Fax: (212) 808-0844

(9) CLAIMS APPENDIX

1. (cancelled)
2. (cancelled)
3. (previously presented) A process for the manufacture of a single or multi-compartment, rigid, water-soluble container, containing a detergent composition, wherein the container is at least partially formed of injection moulded water soluble polymer; the process comprising the steps of forming the container, keeping the container under substantially anhydrous conditions, filling the container with the detergent composition and sealing the container, wherein the container is allowed to come into contact with, or is brought into contact with a plasticiser after sealing.
4. (previously presented) A process according to claim 3, wherein the container comprises a polyvinyl alcohol (PVOH) polymer or a derivative thereof.
5. (original) A process according to claim 4, wherein the container comprises an additional injection moulded water-soluble polymer, which when dissolved in water is active in dexterity.
6. (previously presented) A process according to claim 5, wherein the additional injection moulded water-soluble polymer is selected from polyvinylpyrrolidone, polyacrylic acid or an ester thereof, polymaleic acid or an ester thereof, or a copolymer of any of the foregoing.
7. (previously presented) A process according to claim 4, wherein the water-soluble polymer and additional polymer(s) are simultaneously or sequentially injection moulded.
8. (previously presented) A process according to claim 3 wherein the container is made from a water-soluble receptacle part and is sealed by a water-soluble closure part.

9. (previously presented) A process according to claim 8 wherein the closure part comprises a polyvinyl alcohol film or closure.
10. (previously presented) A process according to claim 8 wherein the receptacle part has side walls which terminate at their upper end in an outward flange, to which the closure part is sealingly secured.
11. (original). A process according to claim 8 wherein the closure part comprises a plastic film.
12. (previously presented) A process according to claim 3 wherein the detergent composition comprises a powder, gel, paste or low water liquid formulation.
13. (previously presented) A process according to claim 10 wherein the container comprises a tablet formulated for delayed or sustained release of a material.
14. (original) A process according to claim 8 wherein the receptacle part comprises an upstanding wall which separates compartments thereof.
15. (previously presented) A process according to claim 8 wherein the closure part is a transparent or translucent material.
16. (previously presented) A process according to claim 3, further comprising the step of joining multiple containers together in an array arrangement, wherein the joined containers are readily separable from each other for use.
17. (previously presented) A method of manufacture of an array as defined in claim 16, which method comprises: forming an array of receptacle parts, each receptacle part being connected to adjacent receptacle parts, but being separable from them by a snap or tear action; charging the receptacle parts with washing composition; and sealingly securing a sheet of a water-soluble polymer over the top of the array, to form closure parts for all the receptacle parts of the array.

18. (previously presented) A process according to claim 3, which comprises melting the polymer(s), injecting the molten polymer(s) into a mould, removing the rigid water soluble container from the mould and adding the detergent composition into the container.

19. (original) A process according to claim 18 wherein a first polymer and an additional polymer(s) are simultaneously or sequentially injected into the mould.

20. (original) A process according to claim 19 wherein the first polymer and the additional polymer(s) are sequentially injected into the mould, in any order, by one of the following techniques, multi-component injection moulding or sandwich injection moulding.

21. (original) A process according to claim 20 wherein the first polymer and the additional polymer(s) are sequentially injected into the mould, in any order, injection moulding a polymer or molten polymer mix into a mould, removing the solid polymer and inserting into a second mould and injection moulding a second polymer or polymer mix into the second mould.

22. (original) A process according to claim 20 wherein the first polymer and the additional polymer(s) are sequentially injected into the mould, in any order, injection moulding a polymer or molten polymer mix into a part of a mould, injection moulding a second polymer or molten polymer mix into a further part of the mould.

23. (original) A process according to claim 20 wherein the first polymer and the additional polymer(s) are simultaneously injection moulded into the mould as a molten mix.

24. (previously presented) A process for the manufacture of a single or multi-compartment rigid, water-soluble container, containing a detergent composition, comprising:
(i) forming an array of containers in an injection moulding process;
(ii) removing the array from the mould;
(iii) placing the array in a storage area, substantially free of moisture;

- (iv) filling the array of containers with the detergent composition;
- (v) placing a closure on the array;
- (vi) sealing the containers; and
- (vii) separating the array into individual containers.

(10) EVIDENCE APPENDIX

None.

(11) RELATED PROCEEDINGS APPENDIX

None.